

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: RICKEY H. HICKS, Respondent
Arkansas Bar ID#89235
CPC Docket No. 2009-101

FILED

JAN 12 2010

FINDINGS AND ORDER

**LESLIE W. STEEN
CLERK**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Pernella Brandon in an Affidavit dated September 14, 2009. The information related to the representation of Ms. Brandon and her family by Respondent beginning in June 2003.

On September 18, 2009, Respondent was served with a formal complaint, supported by affidavit from Ms. Brandon. Respondent filed a timely response and the matter proceeded to ballot vote before Panel B of the Committee pursuant to the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law.

During June 2003, Pernella Brandon and her siblings hired Rickey H. Hicks, an attorney practicing primarily in Little Rock, Arkansas, to represent them with regard to a legal matter involving the death of their mother. Initially they contacted John Walker to assist them but he had a conflict and referred them to Mr. Hicks. It was the belief of Ms. Brandon and her siblings that their mother's death was the result of medical malpractice. During their initial meeting, Mr. Hicks was advised that there had not been an autopsy performed. He had this information from the beginning of his agreed representation.

On August 11, 2003, Mr. Hicks was hired, he filed a Petition to Open Estate in Cleveland County Circuit Court. Mr. Hicks took no further action in the probate matter after opening the Estate. In the Petition, he set out that the value of the estate was unknown "contingent upon the

outcome of a wrongful death lawsuit". With this statement and others made orally to Ms. Brandon and her siblings, they believed Mr. Hicks was filing a lawsuit on their behalf against the doctor and hospital that they believed were responsible for their mother's death. Mr. Hicks never told them to the contrary.

Mr. Hicks made many statements during the course of his representation which were not truthful. According to Ms. Brandon and her siblings, Mr. Hicks advised that he had an expert in Texas review the records and that "they" felt for sure there was a valid malpractice lawsuit.

In September 2004, Mr. Hicks asked that Ms. Brandon obtain the records from the hospital again. Mr. Hicks had not sent out the requests for medical records within the time in which the Authorization he had Ms. Brandon sign was valid. His delay caused the Authorizations he had sent to medical providers to be invalid.

During the seventeen (17) months, Mr. Hicks represented Ms. Brandon and her siblings, Ms. Brandon called many times but Mr. Hicks did not return her calls. In one phone conversation when Ms. Brandon was finally able to reach Mr. Hicks, he advised that the family did not need to worry because the doctor had offered a settlement. There was never any information submitted to demonstrate that a settlement offer was ever made. Further, in the information Mr. Hicks submitted to the Office of Professional Conduct, there is no evidence of any settlement demand made to the involved doctors and / or hospitals.

On November 10, 2004, the day before the statute of limitation elapsed, Mr. Hicks called Ms. Brandon and told her that he was not going to file an action against the doctor or the hospital because no autopsy had been performed and without one he did not think he could take the matter to court. Because of the delay in advising Ms. Brandon of this fact, Mr. Hicks left her and her

family with no opportunity to seek other counsel to assist them.

Mr. Hicks' file on this matter, which was provided to the Office of Professional Conduct, demonstrates little communication with Ms. Brandon or her siblings. There is a minimal amount of correspondence and there are no notes of telephone conversations. There is no correspondence explaining what was happening with the expert review, what the family's options were, what the problems of pursuing a lawsuit may have been, nor any correspondence to the doctor, hospital or either insurance carrier. In fact, the file lends itself to a finding of a lack of diligence and promptness. The Authorization to Disclose Medical Information is signed on June 10, 2003, but the requests for medical records were not sent out until January 2004.

There is one letter dated September 2, 2004, to Mr. Hicks which sets out that the medical expert in Texas was offering a service to Mr. Hicks for a payment of \$1,750 to have a general surgeon look over the medical records of Ms. Brandon's mother. There is no earlier communication in the file sent by Mr. Hicks and represented to be his entire file on the matter.

Further, in correspondence to the Office of Professional Conduct, Mr. Hicks denies that it was the day before the statute of limitations expired that he advised Ms. Brandon that there would be no lawsuit. However, his own records which he provided demonstrate that, because of his own delay, he did not have the expert's final report until November 8, 2004, which appears to validate Ms. Brandon's information that it was immediately prior to the expiration of the statute of limitation when she was advised there would be no lawsuit.

Mr. Hicks maintained that he explained to the family members that he could not file a wrongful death action until an expert opinion was obtained. Mr. Hicks explained that he diligently sought an expert opinion. He also advised that he made it clear that the family could

contact other counsel at any time had they chosen.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, other matters before it, and the Arkansas Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Hicks' conduct violated Rule 1.3, because his conduct with regard to review and pursuit of a possible medical malpractice / wrongful death action for Pernella Brandon and her siblings was neither diligent nor prompt after he was hired in June 2003; because after receiving Authorization for Release of Medical Records in June 2003, and Letters of Administration in August 2003, Mr. Hicks did not make request to the doctors and hospital for the medical records of Willie Mae Jones until January 2004; and, because after being hired in June 2003, Mr. Hicks did not in a diligent manner seek an expert opinion with regard to a possible legal action against the doctors and hospital who treated Willie May Jones. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Hicks' conduct violated Rule 8.4(d) because his failure to take actively pursue the matter with regard to Ms. Brandon's mother and his failure to diligently seek an expert opinion with regard to the possibility of a malpractice action created an unnecessary delay in determining and advising Ms. Brandon and her family that he would not file a lawsuit on their behalf. His delay then resulted in them having no opportunity to seek other counsel to review the matter on their behalf before the applicable statute of limitation expired. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that RICKEY H. HICKS, Arkansas

Bar ID# 89235, be, and hereby is, REPRIMANDED for his conduct in this matter. Pursuant to Section 18.A. of the Procedures, Mr. Hicks is assessed the costs of this proceeding in the amount of \$50. In addition, pursuant to Section 18.B. of the Procedures, Mr. Hicks is ordered to pay a fine in the amount of \$1,000. The costs assessed and fine imposed herein, totaling \$1,050, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: Valerie Z. Kelly
Valerie Kelly, Chair, Panel B

Date: December 15, 2009